

## Burlington Northern Santa Fe Railroad Employees Subjected to Genetic Testing for Carpal Tunnel Syndrome

### Overview

The Burlington Northern Santa Fe (BNSF) Railroad Company conducted genetic tests on 35 employees who sought worker's compensation and medical attention for carpal-tunnel syndrome. Employees claim that they did not give consent for nor have knowledge of the genetic tests at the time blood samples were collected for testing purposes. At least one employee claims that he was threatened with termination for not submitting to genetic testing. Employees contend that BNSF conducted the tests in order to find evidence to help them avoid financial responsibilities associated with the costs of medical care associated with the condition.

A BNSF employee filed a complaint with the Equal Employment Opportunities Commission (EEOC) upon discovering the company's practice. The EEOC filed a lawsuit against BNSF on the grounds that it violated the American's with Disabilities Act (ADA). The EEOC asked the Court for an order directing BNSF to stop its nationwide policy of requiring employees who file worker compensation claims for carpal tunnel syndrome to undergo genetic testing. The EEOC also asked the court to halt any disciplinary action or termination of employees who refused to submit a blood sample for the genetic test.

The suit was settled out of court. BNSF agreed to stop testing its employees and to destroy blood samples from workers who were already tested and delete the results from their records. Company representatives also agreed to promote the need for federal legislation to prohibit the use of genetic test results in employment.

### Interpretation of the ADA

The following ADA definitions will assist in understanding the EEOC's perspective in the BNSF case:

#### *Individual with a Disability*

An individual with a disability under the ADA is a person who has a physical or mental impairment that substantially limits one or more major life activities, has a record of such an impairment, or is regarded as having such an impairment. Major life activities are activities that an average person can perform with little or no difficulty such as walking, breathing, seeing, hearing, speaking, learning, and working.

#### *Prohibited Inquiries and Examinations*

Before making an offer of employment, an employer may not ask job applicants about the existence, nature, or severity of a disability. Applicants may be asked about their ability to perform job functions. A job offer may be conditioned on the results of a medical examination, but only if the examination is required for all entering employees in the same job category. Medical examinations of existing employees must be job-related and consistent with business necessity.

The EEOC considers that employers who discriminate against employees on the basis of predictive genetic tests "regard" the employees as having a disabling impairment and are therefore acting in violation of the ADA (2EEOC Compliance Manual, secs. 902-45, March 14, 1995).